



U. S. Fish and Wildlife Service

Draft Environmental Impact Statement Marine Mammal Protection Act Incidental Take Regulations - Florida Manatee Frequently Asked Questions

(updated June 10, 2002)

Q1: What is an Environmental Impact Statement?

A1: An Environmental Impact Statement (EIS) documents the Service's evaluation of the environmental effects of a proposed action, in this case the Marine Mammal Protection Act (MMPA) incidental take regulations. It also provides information on our evaluation of alternatives for structuring and implementing the proposed regulations.

Q2: Does the public have an opportunity to provide comments on the EIS?

A2: Yes, under the National Environmental Policy Act, we are required to seek public input as part of our preparation of an EIS.

Q3: What type of information is the Service looking for in preparing the EIS?

A3: The Service is seeking written public comments on the preparation of a draft Environmental Impact Statement. Specifically, we are seeking: 1) suggestions regarding the range of alternatives to be considered in the EIS, including alternatives for structuring the proposed incidental take regulations, and alternatives to incidental take regulations; 2) information on the direct, secondary and cumulative effects of this rulemaking on manatees, manatee habitat, and other aspects of the human environment; 3) information regarding the potential social and economic effects of the proposed regulations; 4) information on potential mitigative measures, including technological measures, that would result in the least practicable impact on manatees and their habitat; and 5) suggested means and measures to report and monitor the effects of incidental take on manatees.

Q4: Is there a cut-off date for receiving public comments on the EIS preparations?

A4: Yes. All comments must be received by July 25, 2002. Comments may be mailed, hand delivered, faxed, or submitted electronically. Please mail or deliver comments to: Pete Benjamin, Jacksonville Field Office, 6620 Southpoint Drive, Suite 310, Jacksonville, FL 32216-0958. Comments may also be faxed to 904-232-2404. Comments submitted electronically should be as ASCII text files or in the body of the message, please include your name and return mailing address in your e-mail, and indicate "MMPA Draft EIS" in the subject line. Send electronic comments to: manatee@fws.gov

Q5: What is the Marine Mammal Protection Act?

A5: The Marine Mammal Protection Act (MMPA) of 1972, as amended, (16 U.S.C. 1361-1407) was enacted to provide federal protection of all marine mammals and specifically contains a moratorium on the taking and importation of marine mammals with certain exceptions.

Q6: What is “take”?

A6: “Take”, as defined by the Marine Mammal Protection Act section 3(13), means “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.” Our implementing regulations (50 CFR 18.3) further clarify “take” as to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal, including, without limitation, any of the following: The collection of dead animals or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in the disturbing or molesting of a marine mammal. “Harassment” is defined under the MMPA as any act of pursuit, torment, or annoyance which - (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to migration, breathing, nursing, breeding, feeding, or sheltering. You can find other relevant definitions at 50 CFR 18.27(c).

Q7: What are the Incidental Take Regulations?

A7: One of the exceptions to the prohibition against take provided by the MMPA is contained in Section 101(a)(5)(A). This section authorizes us, on request, to allow for a specific activity (other than commercial fishing) in a specific geographical region the incidental, unintentional take of small numbers of a species or stock of marine mammals if certain findings are made and regulations prescribed. In order to do this, we must find that the total effect of such taking during the specified time period (of up to five years) will have a negligible impact on the species or stock and will not have an unmitigable impact on the availability of such species or stock for subsistence uses. If we make such a finding then we must prescribe regulations setting forth the details associated with such taking and establishing the requirements for monitoring and reporting take of the species.

Q8: Why are you proposing these Incidental Take Regulations?

A8: Development of incidental Take Regulations would allow other federal agencies, State and local governments and private parties that conduct activities that may cause take of manatees to work with us to receive authorization for that take if we can show that mutual efforts by all participants in the process will minimize take to a negligible level. The MMPA regulations would pull together local, State and Federal manatee conservation efforts; thereby improving manatee protection while providing more efficient and predictable regulatory programs for watercraft-related activities.

Q9: What is your legal authority to establish these Incidental Take Regulations?

A9: Our legal authority stems from the MMPA of 1972, as amended, (16 U.S.C. 1361-1407) as implemented under 50 CFR 18.27.

Q10: Are these Incidental Take Regulations going to affect my recreational or commercial use of Florida’s waterways?

A10: Not directly. The promulgation of Incidental Take Regulations will not change any of the laws, regulations or procedures currently in place by which local, State, and Federal governments regulate watercraft-related activities. However, once the regulations are in place, agencies wishing to obtain authorization for take under the regulations may need to modify their regulatory programs in order to ensure that incidental take of manatees resulting from those programs is minimized to the negligible level in accordance with the Incidental Take Regulation.

Q11: Are these Incidental Take Regulations going to affect my ability to build a dock or boat ramp on my private property?

A11: As stated above, the promulgation of Incidental Take Regulations will not change any of the laws, regulations or procedures currently in place by which local, State, and Federal governments regulate watercraft-related activities, including permitting of watercraft access facilities (docks, boat ramps, marinas, etc.). These regulatory programs currently restrict, or prohibit, construction of watercraft access facilities in certain cases, including projects that would result in adverse impacts to manatees or other natural resources. However, if an agency that administers a permit program seeks a Letter of Authorization under these regulations, they may need to alter their procedures to ensure that incidental take associated with permits issued under that program has a negligible impact on manatees. This could result in additional requirements and conditions being placed on permit applicants. It is impossible to determine whether any additional restrictions on permitting of watercraft access facilities will eventually result from this process. Such determinations can only be made after it is determined through the rule-making process what level of incidental take can be considered to have a negligible impact on the manatee, and after specific regulatory programs seek Letters of Authorization and are reviewed. The form the regulations will take, including specific terms regarding how the regulations will be implemented and enforced will be determined through the rulemaking process.

Q12: Are these regulations going to affect my property rights?

A12: This rulemaking will not prohibit anyone from accessing their property by boat, or from developing and using their property in ways that are not already regulated.

Q13: Will the public be given an opportunity to participate in the MMPA regulation process?

A13: Yes. An Advance Notice of Proposed Rulemaking was published in the *Federal Register* on March 12, 2001 (Volume 66, Number 48, pages 14352-14354) advising the public we are initiating our process for developing these Incidental Take Regulations. Public comment on our Advance Notice process was open until April 11, 2001. There will also be opportunity for public comment on the proposed regulations once they are formulated and published in the *Federal Register*, but before they are finalized.

Q14: Does the Service consider economic and quality of life impacts on citizens when developing these Incidental Take Regulations?

A14: The determination regarding what level of incidental take would result in a negligible impact to manatees is solely based on biology, as required by the MMPA. However, we always consider the impact on local economies and public quality of life when making decisions which will result in additional regulations, per the requirements of applicable federal laws, policies and Executive Orders, including but not limited to the National Environmental Policy Act, Regulatory Flexibility Act, and Small business Regulatory Enforcement Flexibility Act.

Q15: Are you singling out watercraft as the primary cause of manatee mortality?

A15: No. We acknowledge that watercraft-related mortality is not the only cause for manatee deaths. It is, however, the number one cause of human-related deaths and development of these regulations offer us an opportunity to implement sound, effective, risk-reduction management actions. Adult survival rates are one of the key criteria we consider in gauging success of our recovery efforts, and implementation of these special regulations will address some of the human actions which may affect this rate.

Q16: What percentage of boat mortality will be addressed by these Incidental Take Regulations?

A16: The Incidental Take Regulations are not designed to target a specific percentage of manatee mortality. They are instead intended to provide specific authorization within precise guidelines for government agencies to allow certain actions which would otherwise be prohibited.

Q17: Are you coordinating development of these Incidental Take Regulations with the state?

A17: Yes.

Q18: I thought you were already designating additional manatee protection areas, do we really need these additional Incidental Take Regulations?

A18: Manatee protection areas are one tool we have for addressing watercraft-related injury and harassment of manatees. These Incidental Take Regulations are broader in scope and provide the framework within which to address the effects of all government activities related to watercraft. Thus the two actions are independent, but related in that both address human actions which impact the Florida manatee.

Q19: How is the settlement between the Save the Manatee Club, et. al., a number of boating and development interests, the U.S. Fish and Wildlife Service, and the Army Corps of Engineers impacting this process?

A19: In the settlement, we agreed to a time frame for announcing our Incidental Take Regulation development process, as well as for preparing the rule. We identified the need for these Incidental Take Regulations and preliminary planning was already underway before the lawsuit was filed.

Q20: What is the final status of litigation between the Save the Manatee Club and the State of Florida?

A20: Please contact the Florida Fish and Wildlife Conservation Commission or Save the Manatee Club for information related to the state lawsuit.

Q21: How will these Incidental Take Regulations be implemented?

A21: Special Incidental Take Regulations under the MMPA, if published, would serve as a permit providing specific authorization within precise guidelines under which incidental take might be allowed to occur. Federal and state agencies could then apply for a Letter of Authorization under these regulations. If approved, the Service would issue the letter outlining under what conditions the incidental take of manatees could occur. Any action contrary to the terms of the Letter of Authorization could result in the loss of liability protection. The specific form the regulations will take will be determined through the rulemaking process.

Q22: Since the State of Florida's 2001 manatee count was higher than expected, why is the Service proceeding with the Incidental Take Regulations?

A22: We are very pleased with last year's count and see these numbers as indicative of the success of many long-term conservation efforts. However, manatees are protected under both the Endangered Species Act and the MMPA, both of which prohibit take of protected species unless otherwise authorized.

Q23: When will your proposed Incidental Take Regulations and EIS be available for public review?

A23: The process of reviewing information and data, and coordinating with multiple federal and State agencies will require a significant amount of effort. We anticipated publishing the draft regulations and EIS later this year.

Q24: When will your final Incidental Take Regulations be published?

A24: After we publish proposed regulations, there will be an opportunity for public comment. We must then address the comments and recommendations expressed during the comment period and revise the proposed regulation accordingly, prior to publishing the final rule. The process of moving from the publication of the draft rule to publication of the final rule generally takes several months.

Q25: Will these Incidental Take Regulations mean added costs to permit applicants?

A25: The form the regulations will take, including decisions regarding how the regulations will be implemented will be determined through the rulemaking process.

Q26: What are the next steps in the process?

A26: We will take into consideration all comments and any additional information received during the public comment period in developing the EIS. Once we have developed the draft EIS, we will publish it in the *Federal Register* and receive public comments on that proposed rule. Once that comment period ends, we will again review the comments and information received, and develop our final EIS. We will publish our final rule in the *Federal Register*. Throughout the process we will continually update our website with current information relative to each step of the process. Our website is located at <http://northflorida.fws.gov>

Q27: How can I stay up to date with this issue?

A27: Throughout the process we will continually update our website with current information relative to each step of the rulemaking process. The website will also have the capacity to accept your comments electronically. Our website is located at <http://northflorida.fws.gov>

You may also request to be added:

- to our e-mail list by writing to: manatee@fws.gov
- to our regular mailing list by writing to: Manatee Mailing List, U.S. Fish and Wildlife Service, Jacksonville Field Office, 6620 Southpoint Dr., South, Suite 310, Jacksonville, FL 32216.